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In the Supreme Court of the United States

OCTOBER TERM, 1943

THE UNITED STATES OF AMERICA, APPELLANT

v.

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

STATEMENT AS TO JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 811

THE UNITED STATES OF AMERICA, APPELLANT

v.

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE

STATEMENT AS TO JURISDICTION UNDER RULE 12 OF THE SUPREME COURT OF THE UNITED STATES

(Filed March 3, 1944)

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment and order of the District Court entered in this cause on February 2, 1944,

580057—44——1

sustaining motions to quash and demurrers to the information therein and quashing the said information. Petition for appeal was filed on March 3, 1944, and is presented to the District Court herewith, to wit, on March 3, 1944.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2, 1907, 34 State. 1246 (as amended by the Act of May 9, 1942, 56 Stat. 401), 18 U. S. C. 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, 28 U. S. C. 345.

STATUTE INVOLVED

The so-called Denture Act (Act of December 24, 1942, c. 823, 56 Stat. 1087; 18 U. S. C. 420f, 420g, 420h) provides as follows:

> § 420f. Unlawful transportation of dentures made in derogation of State or Territorial laws regulating the practice of dentistry.
>
> It shall be unlawful, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent through the mails or in interstate commerce, to use the mails or any instrumentality of interstate commerce for the purpose of sending or bringing into any State or Territory the laws of which prohibit—

(1) the taking of impressions or casts of the human mouth or teeth by a person not licensed under the laws of such State or Territory to practice dentistry;

(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under the laws of such State or Territory to practice dentistry; or,

(3) the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of such State or Territory to practice dentistry,

any denture constructed from any cast or impression made by any person other than, or without the authorization or prescription of, a person licensed under the laws of the State or Territory into which such denture is sent or brought to practice dentistry.

§ 420g. Same; definitions.

As used in section 420f of this title, the term—

(1) "Denture" means a set of artificial teeth, or any prosthetic dental appliance;

(2) "Territory" means any Territory or possession of the United States, including the District of Columbia and the Canal Zone.

(3) "Interstate commerce" means (1) commerce between any State or Territory and any place outside thereof, and (2) commerce within the District of Columbia or within any other Territory not organized with a legislative body.

§ 420h. Same; penalties.

Any violation of any provision of sections 420f–420h of this title shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Section 42 of the Judicial Code (28 U. S. C. 103) provides:

When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired, of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.

THE ISSUE AND THE RULING BELOW

On October 4, 1943, the United States Attorney for the District of Delaware filed a one-count information, in the District Court of the United States for the District of Delaware, charging the defendants with having, in the course of a business of supplying dentures from casts or impressions sent through the United States mails, placed in such mails at Chicago, Illinois, for delivery to one Alice Harris at Houston, Delaware, a set of dentures not made by, or from a cast made by or upon the authorization of, a person licensed by the laws of Delaware to practice dentistry—such use of the mails being alleged to be in violation of the Federal Denture Act. Pur-

suant to a memorandum dated January 26, 1944, appended hereto, the District Court on February 1, 1944, entered an order sustaining defendants' motions to quash and demurrers to the said information, and quashing the same. The Court's conclusion was based in part on the failure of the information to allege that the dentures were actually delivered into Delaware. Accordingly, on January 26, 1944, the United States Attorney filed another information, in three counts, the second and third of which alleged that the parcel containing the dentures, "so mailed as aforesaid, was then transmitted in due course by the Post Office Establishment of the United States to and into the State of Delaware, to-wit, at Houston, Delaware, and within the Jurisdiction of this Court." On February 2, 1944, the District Court, in reliance on its memorandum of January 26, 1944, entered an order sustaining defendants' motions to quash and demurrers to the second information, and quashing the same. It is this order that the United States seeks to appeal.

The District Court ruled that, even though the dentures were delivered into Delaware, the offense was nevertheless completed at Chicago, Illinois, where they were placed in the mails, and that therefore it could not be prosecuted in the District Court for the District of Delaware.

The Denture Act contains no express venue provision, and the question turns on the con-

struction to be given the words "to use the mails or any instrumentality of interstate commerce" in determining where an offense is committed. *United States* v. *Freeman*, 239 U. S. 117, was a direct appeal under the Criminal Appeals Act on a similar question arising under the Webb-Kenyon Act, and is authority for the jurisdiction of the Supreme Court to review the present decision.

THE QUESTION IS SUBSTANTIAL

As the District Court points out, this is the initial appearance of the Federal Denture Act in the courts. The same as the Webb-Kenyon Act, the Denture Act places shipments into a state from a foreign country[1] and shipments from another state "upon the same plane and makes them equally criminal". (*United States* v. *Freeman*, 239 U. S. at 120); and as the Supreme Court further pointed out in the case cited, "Whatever marks the completion of the offense in one likewise marks it in the other. If it be the delivery to the carrier in the case of interstate shipments it equally is this delivery in the case of shipments from a foreign country. And yet all will concede that Congress did not intend to do anything so obviously futile as to denounce as criminal an act wholly done in a foreign country, such as is the delivery to the carrier where

[1] It does this by defining "interstate commerce" as "commerce between any State or Territory and any place outside thereof."

the shipment is from a foreign country into a state. So, if its words permit, as we think they do, the statute must be given a construction which will cause it to reach both classes of shipments, and thereby to accomplish the purpose of its enactment." In the present case "use" of the mails cannot have a narrower meaning than "use" of the facilities of interstate commerce; consequently the effect of the District Court's decision is to deprive the Denture Act of any application to shipments into a State from a foreign country, although Congress has expressly made it applicable to such shipments. Such an incongruous result would present a substantial question even in the absence of prior judicial authority supporting the Government's position.

Support from prior judicial authority is not, however, lacking. In *In re Palliser*, 136 U. S. 257, 267, the Supreme Court pointed out that "the offence charged being an offer of money, or a tender of a contract for the payment of money, contained in a letter mailed in New York and addressed to a postmaster in Connecticut, to induce him to violate his official duty, it might admit of doubt whether any offence against the laws of the United States was committed until the offer or tender was known to the postmaster and might have influenced his mind. *But there can be no doubt at all that, if any offence was committed in New York, the offence continued to be com-*

*mitted when the letter reached the postmaster in Connecticut; * * *"* [italics supplied]. As stated in *Benson* v. *Henkel,* 198 U. S. 1, 15, the case was "treated as covered by" Section 42 of the Judicial Code (28 U. S. C. 103). In concluding that the Government's contention based upon this provision (set forth *supra,* p. 2) is inapplicable here for the reason that enough facts to constitute the crime occurred in Illinois, the District Court, we believe, overlooked the fact, recognized in the *Palliser* opinion, that an offense already committed in one jurisdiction may "continue to be committed" in another. This is necessarily so of any continuing crime which is but one crime although separate parts thereof are severally sufficient to found an indictment or information. That is the situation here. Although but a single offense was committed by the use of the mails for the shipment of a parcel of dentures, it was a continuing one, and any part of such use of the mails was sufficient.[2] We therefore believe that Section 42 of the Judicial Code is not limited to the type of situation where the crime has not been committed until the shipment has reached the state of destination. It follows that it is applicable here, if the words "to use the mails or

[2] Should prosecutions against the same defendant be instituted in both the state of mailing or shipment and the state of delivery, the Government, of course, could be required to elect as to which case it desired to prosecute. *Salinger* v. *Loisel,* 265 U. S. 224, 234.

any instrumentality of interstate commerce" are to be given their normal connotation of any transportation by such means as distinguished from mere "deposit" therein. Had Congress meant the latter it would have used the word "deposit." Cf. *United States* v. *Freeman*, 239 U. S. 117, 120: "To reach a different result the word 'ship' must be read as if it were 'deliver for shipment.'"

The question presented is thus substantial and of large public importance, in view of the fact that the case is one of first impression under the Denture Act, of the fact that the decision of the District Court deprives this Act of its intended application to shipments from foreign countries and thrusts upon United States Attorneys in states of origin the burden of informing themselves and enforcing the policy of the laws of the states of destination, and of the fact that the words of the statute and judicial precedents sustain the construction urged by the Government.

Appended hereto is a copy of the order of the District Court entered on February 2, 1944, and a copy of its prior memorandum of January 26, 1944, in accordance with which the order of February 2, 1944, was entered.

Respectfully submitted.

(S) STEWART LYNCH,
United States Attorney,
District of Delaware.

580057—44——2

Charles Fahy,

ORDER

(Filed Feb. 2, 1944)

And now to-wit this 2nd day of February A. D., 1944, the above entitled cause having come on to be heard on February 2, 1943 [1944] at 2:00 P. M., upon the Motions to Quash and the Demurrers filed by the Defendants to the Criminal Information filed by the United States charging the Defendants with having violated the Act of December 24, 1942 (Title 18, U. S. C. A., Section 420f), and the United States Attorney and Counsel for the Defendants having been fully heard on oral argument, and the Court having maturely considered the Motions and Demurrers and concluded that the questions presented thereby are the same as presented and passed upon by the Court in Criminal Action No. 296 in which the Court filed its Opinion on January 26, 1944, finding that under the Statute upon which the Information is based prosecution may only be had in the District in which the prohibited matter is deposited in the United States Mails and that the offenses charged in the Criminal Information was completed in Chicago, Illinois, in which city the prohibited matter was deposited in the United States Mails and in which Opinion the Court ruled that there are no special provisions in the Statute giving the Courts any other District than that in which the prohibited matter is deposited in the Mails, jurisdiction to prosecute

violations of the cited Statute, now on Motion of Counsel for the Defendants and for the reasons expressed by the Court in its Opinion in Criminal Action No. 296, it is

Ordered and adjudged by the Court that the Motions to Quash the Information and Demurrers filed to the Information on behalf of the Defendants be and they are hereby granted and sustained and the Information quashed.

(S) PAUL LEAHY,
United States District Judge.

A true copy.
Attest:

EDWARD G. POLLARD,
Clerk.

By (S) T. M. BEAUCHAMP,
Deputy Clerk.

In the District Court of the United States for the District of Delaware

Criminal Action No. 296

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARGARET M. JOHNSON AND MARY E. LAYTON, DOING BUSINESS AS THE UNITED STATES DENTAL COMPANY, AND VOYLE CLARK JOHNSON, DEFENDANTS

(Filed Jan. 26, 1944)

Stewart Lynch, U. S. atty., of Wilmington, Delaware, for the United States.

H. Albert Young and Alexander Jamison, both of Wilmington, Delaware, for defendants.

(S) LEAHY,
Leahy,
District Judge.

This matter is here on motions to quash and demurrers to an information charging defendants with violation of an Act of Congress, 56 Stat. 1087, approved December 24, 1942 (Title 18 U. S. C. A. § 420f). The pertinent provisions of the Act provide: "That it shall be unlawful, in the course of the conduct of a business of constructing or supplying dentures from casts or impressions sent

through the mails * * * to use the mails * * * for the purpose of sending or bringing into any State or Territory the laws of which prohibit— * * *

"(2) the construction or supply of dentures by a person other than, or without the authorization or prescription of, a person licensed under the laws of such State or Territory to practice dentistry; or,

"(3) the construction or supply of dentures from impressions or casts made by a person not licensed under the laws of such State or Territory to practice dentistry, any denture constructed from any cast or impressions made by any person other than, or without the authorization or prescription of, a person licensed under the laws of the State or Territory into which such denture is sent or brought to practice dentistry." The Act contains definitions and penalties.

The information alleges violation of the statute in that on August 25, 1943, defendants, while engaged in the course of conducting a business of constructing or supplying dentures from casts or impressions to be sent through the mails or in interstate commerce, "did use the United States mails for the purpose of sending a set of dentures from the State of Illinois into the State of Delaware, * * *." However, it is essential to note that there is no allegation that the dentures were, in fact, received or delivered in the State of Delaware.

The information then alleges that the laws of Delaware "prohibit the taking of impressions or casts of the human mouth by a person not licensed under the [Delaware] laws to practice dentistry and likewise prohibits the construction or supply of dentures by a person other than and without the authorization or prescription of a person licensed under the [Delaware] laws * * * to practice dentistry and also prohibits the construction or supply of dentures from impressions or casts made by a person not licensed under the [Delaware] laws * * * to practice dentistry * * *." The information continues by charging that the dentures mailed by the defendants in Illinois to be sent into Delaware were not "constructed by or under the authorization of, or pursuant to a prescription of a person licensed under the laws of the State of Delaware to practice dentistry * * *." This is the initial appearance of the federal statute before a federal court.

Defendants attack the information on several grounds: (1) the court of this district does not have jurisdiction; (2) the form of the Delaware statutes is such that they are not integrated or covered by the federal provisions; and (3) if they are covered the state and federal statutes are unconstitutional. I shall discuss merely the question

of jurisdiction, for my holding in regard to it will be dispositive of the matter now before me.

Defendants contend that unlawful use of the mails under this statute can be prosecuted only in the district in which the prohibited matter was deposited in the mails. I think this position sound. The significant words of the statute are "to use the mails * * * for the purpose of sending or bringing into any State * * *." That which the statute condemns therefore, is the use of the mails for the purpose of sending or bringing prohibited matter into the State. It is well established—with minor exceptions, none of which apply here—that for most crimes an act and intent are essential. The crime defined in that statute sub judice requires these elements. Obviously, both of these operative facts occurred in Chicago—the place where the package was mailed with the *purpose* of sending or bringing it into Delaware.

In short, there was a completed criminal offense at the moment of mailing because use plus purpose of sending or bringing into any State is what the statute prohibits. It is not an essential prerequisite to a valid conviction that the purpose or intent be, in fact, effectuated. Since the crime was complete at the place of sending, with the purpose mentioned, the government's contention

bottomed on Section 42 of the Judicial Code[1] (28 U. S. C. A. § 103) and cases decided under it is wide of the mark. The typical cases under Section 42 are those involving, for the most part, the crime of conspiracy. A conspirator may be prosecuted either where the conspiracy is formed or where the overt act is committed. *Grigg* v. *Bolton*, 9 cir., 53 F. 2d 158; *United States* v. *Jordan, D. C.*, 22 F. 2d 702. In such situations the statute, in order to prevent a failure of justice, has made the offense punishable in either district as if it had been wholly committed therein. The statute was required to take this form in order to conform to the Sixth Amendment to the Constitution which guarantees to an accused the right to jury trial in "the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." It is necessary to distinguish carefully situations where an offense was committed in both districts or where it was completed in the second district. See *in re Pallister*, 136 U. S. 257; *United States* v. *Freeman*, 239

[1] The statute provides that "When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein." In this case, the offense was actually and wholly committed in Chicago, Illinois, so this statute is manifestly inapplicable.

U. S. 117. Manifestly, such cases are inappropriate here where the offense was completed at the district of mailing, and where the statute invoked does not create an offense in a second or other district.

The meaning of the language of the statute is plain; and in the absence of a special venue provision the alleged offense must be prosecuted in the district where the crime was actually and wholly committed. It is true, of course, that if Congress intended to use the words of the statute in other than their ordinary meaning, the court will accept the Congressional dictionary meaning of the words. This is in accord with *Boston Sand Co.* v. *United States*, 278 U. S. 41. There the Supreme Court said: "* * * when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists. If Congress has been accustomed to use a certain phrase with a more limited meaning than might be attributed to it by common practice, it would be arbitrary to refuse to consider that fact when we come to interpret a statute." With respect to the present statute, however, there is, indeed, much persuasive evidence that Congress intended the words of the statute to have their ordinary meaning. Legislative history supports the conclusion reached here. The Postmaster Gen-

eral, for example, expressed the opinion [2] that the statute does not provide for prosecution of violators in the jurisdiction where the material is caused to be delivered. H. R. 5674, 77th Cong., 1st sess., is referred to in the Congressional Record as of September 17, 1941. It contains the statute which was before the Postmaster General and which he suggested should be rewritten so as to contain a venue provision. Three months later, when the Subcommittee of the House commenced its hearings on February 3, 1942, the statute in

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[2] "OFFICE OF THE POSTMASTER GENERAL,
WASHINGTON, D. C., *November 5, 1941.*

"Hon. CLARENCE F. LEA,
Chairman, Committee on Interstate and
Foreign Commerce,
House of Representatives.

"MY DEAR MR. LEA:

"Your letter of September 18, 1941, requested a report upon H. R. 5674, a bill to protect the public health by the prevention of certain practices leading to dental disorders; and to prevent the circumvention of certain State laws regulating the practice of dentistry.

"This Department has no objection to the enactment of this proposed legislation. *However, it is believed that consideration should be given to the advisability of having the measure provide for prosecution of violators in the jurisdiction where the material is caused to be delivered as well as in the jurisdiction from which it is sent.*

"It has been ascertained from the Bureau of the Budget that this report is in accord with the program of the President.

Very truly yours,

FRANK C. WALKER,
Postmaster General."

the form in which it appears in H. R. 5674 and in its present form as enacted, was introduced before the Subcommittee, together with the recommendation of the Postmaster General. See Hearing of Subcommittee on H. R. 5674, pp. 1–3. Likewise, the Subcommittee of the Senate commenced its hearings on July 15, 1942, and it had the identical statute before it. See Hearings before Subcommittee on S. 2371, p. 1–2. A diligent reading of the reports of the hearings before both branches of Congress fails to disclose that the Postmaster General's suggestion was either considered or acted upon. This is significant, for I do not think that Congress should be presumed to have intended that the statute should have a meaning at war with the interpretation of the governmental department charged with its administration. This precludes, I think, a holding that Congress used the words of the statute in other than their plain and ordinary meaning.

Moreover, if Congress had intended that violators could be prosecuted in the district in which the articles were delivered it could easily have said so as it had done in several prior instances. Sec. 20 (b) (15 U. S. C. A. § 77 (b)) of the Securities and Exchange Act, for example, in dealing with transmission of a prospectus or a security provides that: "Any such criminal proceeding may be brought either in the district wherein the

transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received." I shall not pause to discuss the fundamental rule of strict construction of criminal statutes as an additional support to defendants' contention. See *Prussion* v. *U. S.*, 282 U. S. 675; *U. S.* v. *Resnick*, 299 U. S. 207.

Finally, the government in drafting the present information adopted what defendants argue is the correct interpretation of the statute. The information charges that defendants "did use the United States mails for the purpose of sending a set of dentures from the State of Illinois into the State of Delaware * * *." There is no allegation that the dentures were actually received or delivered in the State of Delaware. It may fairly be said, therefore, that the information accepts the correctness of defendants' contention, for if the government were right in its interpretation it would have alleged that the dentures were received or delivered within this district. This it has failed to do. The internal evidence indicates, then, that the draftsman of the information subconsciously interpreted the statute as I have.

Since the offenses were completed in Chicago, Illinois, and since there are no special venue provisions in the statute giving the courts of any other district jurisdiction, I hold that the defendants' motions should be granted and the demurrers sus-

tained. Since this ruling is dispositive of the present matter, I shall not consider any of the other interesting Constitutional questions raised by defendants.

Dated January 25, 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944